

IS YOUR LOCAL GOVERNMENT PREPARED?

Guide to Local Influence of Federal Decisions

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Federal Statutes Mandating Local Government Participation

- National Environmental Policy Act (NEPA)
- National Forest Management Act (NFMA)
- Federal Land Policy and Management Act (FLPMA)
- The Governor's Consistency Review Process



The National Environmental Policy Act “NEPA”

NEPA applies to “*every major Federal action significantly affecting the quality of the human environment.*” 42 U.S.C. § 4332 (2)(C).



Levels of Local Government Participation under NEPA

A. Cooperating Agency Status: 40 C.F.R. § 1508.5

1. Applies to locally elected bodies such as a conservation district board of supervisors or a county commission.
2. Local government must possess “special expertise” defined as “the authority granted to a local governing body by state statute.”

B. NEPA “consistency review:” 40 C.F.R. § 1506.2(d)

1. If the local government has a “local land use plan,” the federal agency is mandated to:

“discuss any inconsistency of a proposed [federal] action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the [environmental impact] statement should describe the extent to which the [federal] agency would reconcile its proposed action with the [local government] plan or law.”

2. In other words, NEPA consistency review requires:

- a. The local government adopt a local land use or resource plan.**
- b. Where an inconsistency exists between a federal decision and a state or local government plan, the federal agency must attempt to reconcile the difference or explain why the agency cannot reconcile the difference between the federal decision and the local plan.**
- c. Copies of comments or plans by state or local governments must accompany an EIS or EA through the review process. 42 U.S.C. § 4332(C).**



Federal Land Policy and Management Act “FLPMA”

- FLPMA, which governs the BLM, provides requirements for “coordination” and “consistency” with local land use plans.



FLPMA “coordination”

- The BLM must stay apprised of local land use plans.
- The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration.
- The BLM must assist in resolving inconsistencies between local government and BLM land use plans.
- The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs. This includes early notification of proposed decisions that may impact non-federal lands.



FLPMA Consistency with Local Land Use Plan or Policy

- FLPMA requires BLM land use plans to be consistent with local land use plans; if not the BLM owes an explanation of how achieving consistency would have resulted in violation of federal law.
- FLMPA requires the BLM to provide a Governor's consistency review as part of the planning process.



National Forest Management Act “NFMA”

- Forest Service must provide opportunities for coordination of its efforts with similar planning efforts and provide early opportunity for other governmental agency participation in forest planning efforts.



Why Would A Local Government Prepare a Local Land Use or Resource Plan?

To ensure the LOCAL economic well being, culture and customs, and natural resource health are considered in federal decisions.



Local Land Use or Resource Plan

- Local government “land use plans” are plans, policies, descriptions and local data that guide local participation in federal agency decision making processes.
- Local governments do not have jurisdiction over the federal government and cannot require federal agencies to take specific action that violates federal law.



Land Use Plan Template

1. District or County Background and History
2. Description of Coordination and other Processes
3. Local Data
4. Local Policy Statements or Desired Future Conditions
5. Analysis, Alternatives and Mitigation



Final Local Land Use Plan Requirements

1. A local land use plan does not create any new legal authority for a local government to “take over” the federal agencies. Nor are federal agencies simply required to comply with a local land use plan if it requires violation of federal law.
2. Under the Consistency Review requirements, if a federal agency cannot reconcile its decision with a local land use plan, the federal agency is required to provide a rational explanation to the public and local government.
3. A local land use plan has to be adopted by the local government pursuant to applicable state statutes.

